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Attorneys for Complainant

BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
OF THE STATE OF CALIFORNIA

In the Matter of:)	CRMLA LICENSE NO.: 413-0272
)	NMLS NO.: 3122
THE COMMISSIONER OF BUSINESS)	
OVERSIGHT,)	
)	SETTLEMENT AGREEMENT
Complainant,)	
)	
v.)	
)	
iFREEDOM DIRECT CORPORATION,)	
)	
Respondent.)	
)	
)	
)	
)	

This Settlement Agreement (Agreement) is entered into between iFreedom Direct Corporation (iFreedom) and the Commissioner of Business Oversight (Commissioner), and is made with respect to the following facts:

RECITALS

- A. iFreedom is a corporation formed in Utah on December 28, 1996, with a principal place of business at 124 N. Charles Lindbergh Drive, Salt Lake City, Utah 84116.
- B. iFreedom is a residential mortgage lender and servicer licensed by the Commissioner since

August 5, 1999 (License No. 413-0272), pursuant to the California Residential Mortgage Lending Act (CRMLA) (Fin. Code, § 50000 et seq.).

C. The Commissioner has jurisdiction over the licensing and regulation of persons and entities engaged in the business of lending and/or servicing residential mortgage loans under the CRMLA.

D. Kevin P. Gates is the President of iFreedom and, as such, is authorized to enter into this Agreement on behalf of iFreedom.

E. During a regulatory examination of iFreedom in 2011, the Commissioner found that iFreedom overcharged per diem interest to borrowers in violation of Financial Code section 50204, subdivision (o), and Civil Code section 2948.5.

F. During a subsequent examination of iFreedom commencing on April 4, 2016, the Commissioner found that iFreedom overcharged per diem interest to borrowers in violation of Financial Code section 50204, subdivision (o), and Civil Code section 2948.5. The Commissioner also found that iFreedom failed to report servicing activities in violation of Financial Code section 50401, subdivision (a), and failed to prominently disclose specified foreclosure information on its website in violation of Financial Code section 50204, subdivision (i) and Civil Code section 2923.5.

G. On May 26, 2017, the Commissioner issued an Order to Discontinue Violations, together with an Accusation supporting a license suspension for up to 12 months and administrative penalties of \$25,000.00 to iFreedom ("Enforcement Action"). iFreedom timely submitted a request for hearing which is currently scheduled for December 12-13, 2017, at the Office of Administrative Hearings, 320 W. Fourth Street, Suite 630, Los Angeles, CA 90013.

H. It is the intention and desire of the parties to resolve this matter without the necessity of a hearing and/or other litigation.

I. The Commissioner finds that this action is appropriate, in the public interest, and consistent with the purpose fairly intended by the policy and provisions of the CRMLA.

NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set forth in this document, the parties agree as follows:

TERMS AND CONDITIONS

1. Purpose. The purpose of this Agreement is to resolve the matter before the Commissioner

1 in a manner that avoids the expense of a hearing and possible further court proceedings, is in the
2 public interest, protects consumers, and is consistent with the purposes, policies, and provisions of the
3 CRMLA.

4 2. Finality of Agreement. iFreedom agrees to comply with the Agreement and stipulates that
5 the Agreement is hereby deemed final. The Agreement resolves all matters arising from the current
6 and previous examinations of iFreedom by the Commissioner.

7 3. Order to Discontinue Violations. iFreedom stipulates to and agrees that the Order to
8 Discontinue Violations issued on May 26, 2017 is hereby deemed a final order as of the effective date
9 of this Agreement.

10 4. Penalties. iFreedom agrees to pay a penalty of \$20,000.00, due and payable within 10
11 business days from the date of execution of this Agreement as described in Paragraph 24, made
12 payable in the form of a cashier's check or Automated Clearing House deposit to the "Department of
13 Business Oversight," and transmitted to the attention of: Accounting, at the Department of Business
14 Oversight located at 1515 K Street, Suite 200, Sacramento, California, 95814. Notice of the payment
15 shall concurrently be sent to the attention of Timothy L. Le Bas, Senior Counsel, Enforcement
16 Division, 1515 K Street, Suite 200, Sacramento, California 95814.

17 5. Waiver of Hearing Rights. iFreedom acknowledges that the Commissioner is ready,
18 willing and able to proceed with the administrative enforcement action on the charges contained in
19 this Agreement, and iFreedom hereby waives the right to a hearing, and to any reconsideration,
20 appeal, or other right to review which may be afforded pursuant to the CRMLA; the California
21 Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of law;
22 and by waiving such rights, iFreedom effectively consents to this Agreement becoming final.

23 6. Policies and Procedures. iFreedom has developed and implemented, and the
24 Commissioner has approved, policies and procedures as of the date of this Agreement that are
25 designed to prevent per diem overcharges. iFreedom shall provide these policies and procedures to
26 the Independent Auditor.

27 7. Self-Audit of Past Loans and Refunds. iFreedom agrees to conduct a self-audit of its loan
28 files for loans originated from July 1, 2014 to November 30, 2017. The self-audit shall commence no

1 later than 30 calendar days from the effective date of this Agreement. iFreedom shall submit a self-
2 audit report to the Department no later than 90 calendar days from the effective date of this
3 Agreement. The self-audit report shall cover all California loans originated by iFreedom from July 1,
4 2014 to November 30, 2017. The self-audit report with respect to per diem charges, shall include, at
5 a minimum, the following: (i) the total number of loans originated and funded by iFreedom from July
6 1, 2014 to November 30, 2017; (ii) the number of loans with per diem interest charges in excess of
7 the amount permitted by Financial Code section 50204, subdivision (o), and Civil Code section
8 2948.5; and (iii) for each and every loan, the borrower loan number, borrower name, address, loan
9 amount, loan date, per diem interest charged, per diem interest that should have been charged under
10 Financial Code section 50204, subdivision (o) and Civil Code section 2948.5, overcharge amount (if
11 any), date of refund (if applicable), and proof of refund (if applicable). iFreedom agrees to refund
12 with ten (10) percent interest (per annum) all of the borrowers identified by the self-audit report who
13 were charged excessive per diem interest. iFreedom agrees to mail all refunds no later than 10
14 business days following completion of the self-audit. If the self-audit shows an overpayment of per
15 diem interest plus 10 percent interest per annum to any borrower based on a previous refund from
16 iFreedom, then iFreedom agrees not to collect that amount from the borrower. iFreedom shall be
17 responsible for ensuring that any outstanding refund payment owed to any borrower is escheated to
18 the State of California pursuant to the provisions of the California Unclaimed Property Law (Code
19 Civ. Proc., § 1500 et seq.).

20 8. Independent Auditor. Within 30 calendar days following the effective date of this
21 Agreement as defined in Paragraph 24, iFreedom agrees to engage an independent certified public
22 accountant or certified public accounting firm that is reasonably acceptable to the Department
23 (“Independent Auditor”) to detect and report on violations of law as required by Paragraph 9 of this
24 Agreement.

25 9. Independent Audit of Prospective Loans and Reports on Overcharges. iFreedom agrees to
26 have the Independent Auditor conduct an internal review of iFreedom’s loan files and records to
27 determine whether its policies and procedures to prevent per diem overcharges are effective. The
28 audit shall commence no later than 30 calendar days from the date of engagement of the Independent

Auditor. The audit shall cover all California loans originated and funded by iFreedom from December 1, 2017 and continuing for a 12-month period. For the 12-month period, the Independent Auditor shall submit audit reports on a quarterly basis as follows:

a. The first audit report shall cover all California loans originated by iFreedom from December 1, 2017 to February 28, 2018, and shall be submitted to the Commissioner by April 30, 2018.

b. The second audit report shall cover all California loans originated by iFreedom from March 1, 2018 to May 31, 2018, and shall be submitted to the Commissioner by July 31, 2018.

c. The third audit report shall cover all California loans originated by iFreedom from June 1, 2018 to August 31, 2018, and shall be submitted to the Commissioner by October 31, 2018.

d. The fourth audit report shall cover all California loans originated by iFreedom from September 1, 2018 to November 30, 2018, and shall be submitted to the Commissioner by January 31, 2019.

e. The audit reports shall describe at a minimum, the following: (i) the total number of loans originated and funded by iFreedom; (ii) the number of loans with per diem interest charges in excess of the amount permitted by Financial Code section 50204, subdivision (o), and Civil Code section 2948.5; and (iii) for each and every loan, the borrower loan number, borrower name, address, loan amount, loan date, per diem interest charged, per diem interest that should have been charged under Financial Code section 50204, subdivision (o) and Civil Code section 2948.5, overcharge amount (if any), date of refund (if applicable), and proof of refund (if applicable).

f. iFreedom agrees to refund with 10 percent interest (per annum) all of the borrowers identified by the Independent Audit report who were charged excessive per diem interest. iFreedom agrees to mail the refunds no later than 10 business days following receipt of the Independent Auditor's findings. iFreedom shall be responsible for ensuring that any outstanding refund payment owed to any borrower is escheated to the State of California pursuant to the provisions of the California Unclaimed Property Law (Code Civ. Proc., § 1500 et seq.).

10. Administrative Penalty Based on Audit Findings. iFreedom agrees to pay an administrative penalty of \$150.00 for each violation involving a per diem overcharge identified by the

1 Independent Auditor pursuant to Paragraph 9 or the self-audit pursuant to Paragraph 7. With respect
2 to per diem overcharges, all loans that are compliant at closing, or compliant within 30 calendar days
3 of closing, shall not be deemed to be new violations. "Closing" means the date when the majority of
4 loan funds are disbursed by the closing agent to the borrower or on behalf of the borrower. The
5 payment for these penalties shall be made within 10 business days from iFreedom's receipt of the
6 Independent Auditor's quarterly reports or the self-audit report and made payable in the form of a
7 cashier's check or Automated Clearing House deposit to the "Department of Business Oversight,"
8 and transmitted to the attention of: Accounting, at the Department of Business Oversight located at
9 1515 K Street, Suite 200, Sacramento, California, 95814. Notice of the payment shall concurrently
10 be sent to the attention of Timothy L. Le Bas, Senior Counsel, Enforcement Division, 1515 K Street,
11 Suite 200, Sacramento, California 95814.

12 11. Suspension of License for Failure to Comply. iFreedom agrees that if it fails to meet any
13 deadline or any requirement in Paragraphs 4 and 7-10 above, other than inadvertent and isolated
14 errors that are promptly corrected by iFreedom, within 15 calendar days after written notice from the
15 Commissioner, iFreedom's CRMLA license number 413-0272 shall be immediately suspended until
16 the requirements are met. iFreedom hereby waives any notice and hearing rights to contest the
17 immediate suspension which may be afforded under the California Financial Code, the California
18 Administrative Procedure Act, the California Code of Civil Procedure, or any other legal provisions.
19 Except as otherwise set forth in the Agreement, the Commissioner will not suspend or revoke the
20 residential mortgage lender and loan servicer licenses of iFreedom or take any further action based on
21 violation of any provisions cited in the Enforcement Action. Accordingly, this Agreement, which
22 resolves the Enforcement Action, does not affect the licensing status of iFreedom.

23 12. Full and Final Settlement. The parties hereby acknowledge and agree that this
24 Agreement is intended to constitute a full, final, and complete resolution of the Administrative Action
25 and that no further proceedings or actions will be brought by the Commissioner in connection with
26 these matters either under the CRMLA, or any other provision of law, excepting therefrom any
27 proceeding or action if such proceeding or action is based upon discovery of new and further
28 violations of the CRMLA which do not form the basis for this Agreement or which were knowingly

concealed from the Commissioner by iFreedom.

13. Binding. This Agreement is binding on all heirs, assigns, and/or successors in interest.

14. Commissioner's Duties. The parties further acknowledge and agree that nothing contained in this Agreement shall operate to limit the Commissioner's ability to assist any other agency (city, county, state or federal) with any prosecution, administrative, civil or criminal, brought by any such agency against iFreedom or any other person based upon any of the activities alleged in these matters or otherwise.

15. Third Party Actions. It is the intent and understanding between the parties that this Agreement does not create any private rights or remedies against iFreedom create any liability for iFreedom or limit defenses of iFreedom for any person or entity not a party to this Agreement.

16. Future Actions by Commissioner. This Agreement may be revoked and the Commissioner may pursue any and all remedies available under law or this Agreement against iFreedom, if the Commissioner later discovers that iFreedom knowingly or willfully withheld information used and relied upon in this Agreement. Further, iFreedom agrees that this Agreement does not resolve any remedies, including penalties that may be assessed by the Commissioner, upon discovery of new and further violations of the CRMLA that occur after execution of this Agreement, which do not form the basis for this Agreement.

17. Independent Legal Advice. Each of the parties represents, warrants, and agrees that it has received independent advice from its attorney(s) and/or representatives with respect to the advisability of executing this Agreement.

18. Counterparts. The parties agree that this Agreement may be executed in one or more separate counterparts, each of which when so executed, shall be deemed an original. A fax signature shall be deemed the same as an original signature. Such counterparts shall together constitute and be one and the same instrument.

19. Waiver, Modification, and Qualified Integration. The waiver of any provision of this Agreement shall not operate to waive any other provision set forth herein. No waiver, amendment, or modification of this Agreement shall be valid or binding to any extent unless it is in writing and signed by all of the parties affected by it.

1 20. Headings and Governing Law. The headings to the paragraphs of this Agreement are
2 inserted for convenience only and will not be deemed a part hereof or affect the construction or
3 interpretation of the provisions hereof. This Agreement shall be construed and enforced in
4 accordance with and governed by California law.

5 21. Full Integration. Each of the parties represents, warrants, and agrees that in executing this
6 Agreement it has relied solely on the statements set forth herein and the advice of its own counsel.
7 Each of the parties further represents, warrants, and agrees that in executing this Agreement it has
8 placed no reliance on any statement, representation, or promise of any other party, or any other
9 person or entity not expressly set forth herein, or upon the failure of any party or any other person or
10 entity to make any statement, representation or disclosure of anything whatsoever. The parties have
11 included this clause: (1) to preclude any claim that any party was in any way fraudulently induced to
12 execute this Agreement; and (2) to preclude the introduction of parol evidence to vary, interpret,
13 supplement, or contradict the terms of this Agreement.

14 22. Presumption from Drafting. In that the parties have had the opportunity to draft, review
15 and edit the language of this Agreement, no presumption for or against any party arising out of
16 drafting all or any part of this Agreement will be applied in any action relating to, connected to, or
17 involving this Agreement. Accordingly, the parties waive the benefit of Civil Code section 1654 and
18 any successor or amended statute, providing that in cases of uncertainty, language of a contract
19 should be interpreted most strongly against the party who caused the uncertainty to exist.

20 23. Voluntary Agreement. iFreedom enters into this Agreement voluntarily and without
21 coercion and acknowledges that no promises, threats or assurances have been made by the
22 Commissioner or any officer, or agent thereof, about this Agreement.

23 24. Effective Date. This Agreement shall not become effective and final until signed by all
24 parties and sent by electronic mail to Kevin P. Gates at kgates@ifreedomdirect.com.

25 25. Public Record. Respondent acknowledges that this Agreement is a public record.

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26. Authority to Execute. Each signator hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Agreement.

Dated: November 14, 2017

Jan Lynn Owen
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: November 8, 2017

iFREEDOM DIRECT CORPORATION

By _____
KEVIN P. GATES
President

APPROVED AS TO FORM AND CONTENT:

Dated: November 13, 2017

By _____
JONATHAN JAFFE
Mayer Brown, LLP
Counsel for iFreedom Direct Corporation